Public Prosecutor v Wong Choo Chian

HIGH COURT (MUAR) — CRIMINAL TRIAL NO 45–1 OF 2003
JEFFREY TAN J
15 OCTOBER 2003

Criminal Procedure — Sentence — Principles of sentencing — First and youngest offender — Whether sentence should be equally same as of another same offence

The accused pleaded guilty for the offence of murder under s 304(a) of the Penal Code after the alternative charge was read and explained to him. Being satisfied that the accused fully understood the nature and consequences of his plea, and admitted without any qualification the alleged charge against him, and that the alleged offence had been disclosed, the court accepted the plea of guilt and recorded a conviction. Counsel for the accused mitigated that the accused was a first offender and the youngest of the three boys involved in the incident; and that the sentence should follow Muar High Court Criminal Trial No 45–10–1999.

Held, sentencing the accused accordingly to ten years' imprisonment from date of arrest:

Where two or more offenders are to be sentenced for the participation in the same offence, the sentence to be passed on them should be the same, unless there is a relevant difference in their responsibility for the offence or their personal circumstances. A difference in the sentences imposed on co-defendants may be justified by their difference roles in the offence. The ages of the accused, the degrees of culpability and the differences in mitigation are amongst some of the important factors which warrant a disparity in sentences. But there was no evidence that the accused had played a lesser role than the accused in 45–0–1999. Both would have received the same sentence, if both had been sentenced on the same occasion. Therefore, there was no question of an unequal sentence (see para 7); *Public Prosecutor v Nazarudin bin Ahmad & Ors* [1993] 2 MLJ 9; *Public Prosecutor v Ravindran & Ors* [19931 1 MLJ 45 and *Public Prosecutor v Mohd Amin bin Mohd Razali & Ors* [2002] 5 MLJ 406 followed.

[**Bahasa Malaysia summary**

Tertuduh telah membuat pengakuan bersalah kerana kesalahan membunuh di bawah s 304(a) Kanun Keseksaan setelah pertuduhan alternatif dibaca dan dijelaskan kepadanya. Setelah berpuas hati bahawa teruduh memahami keseluruhan sifat dan akibat plinya, dan mengaku tanpa apa-apa syarat pertuduhan yang dikatakan terhadapnya, dan bahawa kesalahan yang dikatakan telah didedahkan, mahkamah menerima pengakuan bersalah tersebut dan merekodlan satu sabitan. Peguam bagi pihak tertuduh telah membuat mitigasi bahawa tertuduh adalah pesalah kali pertama dan yang termuda antara ketiga-tiga budak lelaki yang terlibat dalam kejadian tersebut; dan bahawa hukuman hendaklah mengikut Perbicaraan Jenayah Mahkamah Tinggi Muar No 45–10–1999.

Diputuskan, menjatuhkan hukuman sepuluh tahun penjara sewajarnya ke atas tertuduh dari tarikh tangkapan:

Di mana dua atau lebih pesalah dihukum kerana terlibat dalam kesalahan sama, hukuman yang dijatuhkan ke atas mereka hendaklah sama, kecuali terdapat perbezaan relevan dalam tanggungjawab mereka untuk kesalahan-kesalahn tersebut atau keadaan peribadi mereka. Perbezaan dalam hukuman yang dijatuhkan ke atas defendan bersama boleh dijustifikasikan oleh perbezaan peranan mereka dalam kesalahan tersebut. Umur tertuduh, tahap penglibatan dan perbezaan dalam mitigasi adalah antara faktor-faktor penting yang mewarankan perbezaan penghukuman. Namun begitu tiada keterangan bahawa tertuduh telah memainkan peranan yang kurang daripada tertuduh dalam 45–0–1999. Kedua-duanya akan menerima hukuman yang sama, jika kedua-duanya dihukum untuk kejadian yang sama. Oleh itu, hukuman yang diberikan adalah setimpal (lihat perenggan 7); *Public Prosecutor v Nazarudin bin Ahmad & Ors* [1993] 2 MLJ 9; *Public Prosecutor v Ravindran & Ors* [19931 1 MLJ 45 dan *Public Prosecutor v Mohd Amin bin Mohd Razali & Ors* [2002] 5 MLJ 406 diikut.]

Notes

For cases on principles in sentencing, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3371–3453.

Cases referred to

PP v Mohd Amin bin Mohd Razali & Ors [2002] 5 MLJ 406 (folld)
PP v Nazarudin bin Ahmad & Ors [1993] 2 MLJ 9 (folld)
PP v Ravindran & Ors [19931 1 MLJ 45 (folld)

Legislation referred to

Penal Code s 304(a)

Lee Lay Chho (Attorney General's Chambers) for the prosecution.
N Chandran Mohan (N Chandran Mohan & Partners) for the accused.

Jeffrey Tan J:

[1] After the alternative charge ('P3') was read and explained to him, the accused pleaded guilty to the following offence:

Bahawa kamu bersama-sama Boo Cheng Chong @ Ann Tiong No K/P 800322–01–5471 dan seorang lagi yang masih bebas pada 23 Julai 1998 jam lebih kurang 9.15 malam, di hadapan rumah No 62–A, Taman Yong Peng, Yong Peng, di dalam daerah Batu Pahat, di dalam Negeri Johor telah menyebabkan kematian NGO HON TONG No K/P 770630–01–6623, dengan niat menyebabkn kecederaan-kecederaan yang boleh membawa kematian. Oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 304(a) Kanun Keseksaan di baca bersama-sama dengan seksyen 34 Kanun yang sama.

[2] And after the statement of facts of the case ('P4') that the learned deputy public prosecutor ('DPP'), Lee Lay Choo presented was read and explained to him, the accused admitted the following: (a) at about 9pm on 23 July 1998, the deceased and his friends were inside 62A Taman Yong Peng, the house of Ng Jian Yeong; (b) at 9.15pm, the deceased walked out from the house to visit his girlfriend, one Lee Chin Hong who was living nearby; (c) on the way, the deceased was attacked by three persons with machetes (tiba-tiba datang tiga lelaki cina terus menyerang simati dengan menggunakan parang); (d) Lee Chin Hong who heard the shouts of the deceased rushed out from her house to render help, but she too was attacked, by one of the three assailants, and sustained injuries; (e) the assailants escaped on motorcycles; (f) the deceased who was grievously injured was taken to a government clinic and then to the Batu Pahat Hospital, for treatment; (g) at 10.45pm on 23 July 1998, the deceased passed away (see P6); (h) the cause of death was 'head injuries due to incised wounds'; (i) on 24 March 1999, Boo Cheng Chong was arrested; (j) on 12 May 2000 and in Muar High Court Criminal Trial No 45–10–1999, Boo Cheng Chong pleaded guilty to an alternative charge for an offence punishable under s 304(a) of the Penal Code, and was sentenced to a term of imprisonment of ten years; (k) on 25 March 2002, the accused was arrested; (i) in the course of police investigations, the accused admitted that he was one of the three assailants in question, that he and the other two assailants (Boo Cheng Chong and one Taiko Huat) intended to attack the deceased with machetes that Taiko Huat had brought with him, and that all three attacked the deceased with machetes.

[3] Pertinent to the facts of the case, the learned deputy public prosecutor also tendered a police report (P5), a certificate of death of the deceased (P6), a post mortem report (P7), a chemist report (P6), two photographs of the deceased (P8[l–2]), and five photographs of the scene (P9[l–5]).

[4] Being satisfied that the accused fully understood the nature and consequences of his plea, and admitted without any qualification the alleged charge against him, and that the alleged offence had been disclosed, the court accepted the plea of guilt and recorded a conviction.

[5] In mitigation, Mr N Chandran Mohan for the accused said that the accused was the youngest of three boys and was educated to the level of Form Three. The accused came under the influence of 'Taiko Huat' who supplied the weapons. *Taiko Huat* was 35 years old while the accused was only 18 years and nine months old at the material time. Sentence should follow Muar High Court Criminal Trial No 45–10–1999. The accused was a first offender.

[6] The learned DPP merely said that the sentence to be imposed should follow Muar High Court Criminal Trial No 45–10–1999.

[7] First, it must be said that the call to the court to follow and impose the sentence in 45–10–1999 came as no surprise. After all, both the accused in the instant case and the accused in the said 45–10–1999 had committed the very same offence. Only the personal a factors were any different. In fact,

the personal factors were about the same. Both were similarly just above 18years old and who were first offenders who pleaded guilty. Both committed the same offence, and both should receive the same sentence (see *Public Prosecutor v Nazarudin bin Ahmad & Ors* [1993] 2 MLJ 9). Where two or more offenders are to be sentenced for the participation in the same offence, 'the sentence to be passed on them should be the same, unless there is a relevant difference in their responsibility for the offence or their personal circumstances' (Archbold 1993, and quoted in *Public Prosecutor v Nazarudin bin Ahmad & Ors*). '... the general rule is that any unjust disparity should be avoided. However, there is nothing to prevent the court from imposing a range of sentences on the accused persons if there are important considerations for so doing. A difference in the sentences imposed on co-defendants may be justified by their difference roles in the offence ...' (Archbold 2002 para 5-170). The ages of the accused, the degrees of culpability and the differences in mitigation are amongst some of the important factors which warrant a disparity in sentences (see *Public Prosecutor v Ravindran & Ors* [19931 1 MLJ 45 and quoted in *Public Prosecutor v Mohd Amin bin Mohd Razali & Ors* [2002] 5 MLJ 406). But there was no evidence that the accused had played a lesser role than the accused in 45–10–1999. Both would have received the same sentence, ifboth had been sentenced on the same occasion. There would not have been an unequal sentence. Accordingly, the accused was sentenced to a term of imprisonment of ten years with effect from the date of his arrest. And as for the reason for that length of the term of imprisonment, it must be the same as that given by this court in 45–10–1999 (a copy of which grounds of judgment is annexed herewith for easy reference).

Accused sentenced accordingly to ten years' imprisonment from date of arrest.

Reported by Ezatul Zuria Azhari